



NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 522

RIN 3141-AA73

Submission of Gaming Ordinance or Resolution

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (NIGC) proposes to amend the Submission of Gaming Ordinance or Resolution under the Indian Gaming Regulatory Act. The proposed rule would amend the regulations controlling the submission and approval requirements of tribal gaming ordinances or resolutions and amendments thereof. Notably, the proposed rule: Authorizes the submission of documents in electronic or physical form; clarifies that the submission requirements applies to amendments of ordinances or resolutions; eliminates the requirement that an Indian tribe provide copies of all gaming regulations with its submission; requires tribes to submit a copy of pertinent governing documents; initiates the 90-day deadline for the NIGC's Chair ruling upon receipt of a complete submission; and eliminates the requirement that the NIGC Chair publish a tribe's entire gaming ordinance in the Federal Register.

DATES: The agency must receive comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email*: information@nigc.gov
- *Fax*: (202) 632–7066.
- *Mail*: National Indian Gaming Commission, 1849 C Street NW, MS 1621, Washington, DC 20240.
- *Hand Delivery*: National Indian Gaming Commission, 90 K Street NE, Suite 200, Washington, DC 20002, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, National Indian Gaming Commission; Telephone: (202) 632-7003.

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments providing the factual basis behind supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands.

On January 22, 1993, the NIGC published a final rule in the **Federal Register** called *Submission of Gaming Ordinance or Resolution*. 58 FR 5810. The rule added part 522, which established a process for Indian tribes to submit a gaming ordinance, resolution, or amendment for the NIGC Chair's review and approval as required by 25 U.S.C. 2710(b)(2) and (d)(2)(a). The NIGC's intent was to assist tribal gaming operators with maintaining compliance with IGRA and implement its provisions germane to gaming ordinances or resolutions. The Commission promulgated three minor amendments thereafter. 58 FR 16494, 73 FR 6029, and 80 FR 31994.

On March 23, 1993, the Commission amended its submission requirements at § 522.2(h) to include identification of a law enforcement agency that will take fingerprints and a description of the procedures for conducting a criminal history check by a law enforcement agency. 58 FR 16494.

On February 1, 2008, the Commission amended Part 522's submission requirements to codify that a tribe shall provide Indian lands or environmental and public health and safety documentation upon the NIGC Chair's request, 25 U.S.C. 2710(b), (2)(e), and (d)(1). 73 FR 6029.

On June 5, 2015, the Commission amended part 522 to remove and update references to other regulations and make minor grammatical changes. 80 FR 31994.

To date, it has been approximately twenty-eight years since the NIGC first promulgated part 522, with few revisions. During the intervening period, Indian gaming has undergone a meteoric expansion. One of the many benefits of that expansion includes the NIGC's continued utilization of part 522, which has manifested into a robust understanding of how to improve the regulations. The proposed amendments below codify that intent.

III. Development of the Proposed Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the gaming ordinance or resolution submission process. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendment to the gaming ordinance or resolution submission regulations are intended to improve the Agency's efficiency in processing gaming ordinance or resolution submissions, clarify existing regulations, and eliminate unnecessary obstacles for tribal gaming operators. The Commission held two virtual consultation sessions in July of 2021 to receive tribal input on the possible changes.

The Commission reviewed all of the public's comments and now proposes these changes, which it believes will improve the gaming ordinance or resolution submission process.

IV. Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rulemaking does not have an effect on the economy of \$100 million or more. The rulemaking will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic

regions. Nor will the rulemaking have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rulemaking does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rulemaking does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rulemaking were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 et seq. and assigned OMB Control Number 3141– 0003.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC’s consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe’s formal relationship with the Commission; or the consideration of the Commission’s trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the gaming ordinance or resolution submission and approval process.

List of Subjects in 25 CFR Part 522

Gambling, Indian--lands, Indian--tribal government, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, the National Indian Gaming Commission proposes to revise 25 CFR part 522 is amended as follows:

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

Sec.

522.1 Scope of this part.

522.2 Submission requirements.

522.3 Amendment.

522.4 Amendment Approvals and Disapprovals.

522.5 Approval requirements for class II ordinances.

522.6 Disapproval of a class II ordinance.

522.7 Approval requirements for class III ordinances.

522.8 Disapproval of a class III ordinance.

522.9 Publication of class III ordinance and approval.

522.10 Approval by operation of law.

522.11 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

522.12 Individually owned class II gaming operations operating on September 1, 1986.

522.13 Revocation of class III gaming.

Authority: 25 U.S.C. 2706, 2710, 2712.

§522.1 Scope of this part.

This part applies to any class II or class III gaming ordinance or resolution or amendment thereto adopted by a tribe.

§522.2 Submission requirements.

A tribe shall submit to the Chair all of the following information with a request for approval of a class II or class III ordinance or resolution or amendment thereto:

(a) One copy of an ordinance or resolution certified as authentic by an authorized tribal official that meets the approval requirements in §522.4(b) or §522.6 of this part;

(b) A copy of the procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in §556.2 of this chapter;

(c) A copy of the procedures to issue tribal licenses to primary management officials and key employees promulgated in accordance with §558.3 of this chapter;

(d) A copy of the tribe's constitution, governing document(s), or an accurate and true description of the Tribe's governmental entity and authority to enact the submitted ordinance or resolution;

(e) When an ordinance or resolution concerns class III gaming, a copy of any approved tribal-state compact or class III procedures as prescribed by the Secretary that are in effect at the time the ordinance or amendment is passed;

(f) A copy of the procedures for resolving disputes between the gaming public and the tribe or the management contractor;

(g) A copy of the designation of an agent for service under §519.1 of this chapter; and

(h) Identification of the entity that will take fingerprints and a copy of the procedures for conducting a criminal history check. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

(i) A tribe shall provide Indian lands or tribal gaming regulations or environmental and public health and safety documentation that the Chair may request in the Chair's discretion. The tribe shall have 30 days from receipt of a request for additional documentation to respond.

§522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chair's approval any amendment to an ordinance or resolution.

(b) A tribe shall submit to the Chair all of the following information with a request for approval of an amendment:

(1) One copy of the amendment certified as authentic by an authorized tribal official; and

(2) Any submission under §522.2(b) through (h) of this part that have been modified since their prior conveyance to the Chair for an ordinance, resolution, or amendment approval.

(3) A conforming copy of the entire ordinance or resolution containing the requested modifications.

§522.4 Amendment approvals and disapprovals.

(a) No later than 90 days after the submission of any amendment to a class II ordinance or resolution that includes all the of information required by §522.3(b) of this part, the Chair shall approve the amendment if the Chair finds that:

(1) A tribe meets the amendment submission requirements of §522.3(b); and

(2) The amendment complies with §522.5(b). No later than 90 days after a tribe submits any amendment to a class II ordinance for approval, the Chair may disapprove the amendment if it determines that a tribe failed to comply with the requirements of §522.3 or (a)(1) and (2) of this section. The Chair shall notify a tribe of its right to appeal under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

(b) No later than 90 days after the submission of any amendment to a class III ordinance or resolution, the Chair shall approve the amendment if the Chair finds that—

(1) A tribe meets the amendment submission requirements of §522.3(b); and

(2) The amendment complies with §522.7(b) and (c).

(c) No later than 90 days after a tribe submits any amendment to a class III ordinance for approval, the Chair may disapprove the amendment if it determines that—

(1) A tribal governing body did not adopt the amendment in compliance with the governing documents of the tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the amendment by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(3) A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§522.5 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chair including all materials required under §522.2 of this part, the Chair shall approve the class II ordinance or resolution if the Chair finds that:

(a) A tribe meets the submission requirements contained in §522.2 of this part; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either §522.11 or §522.12 of this part;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than \$25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

(8) A tribe that subsequently amends a gaming ordinance pending before the Chair shall also provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission.

§522.6 Disapproval of a class II ordinance.

No later than 90 days after a tribe submits an ordinance for approval under §522.2 of this part, the Chair may disapprove an ordinance if it determines that a tribe failed to comply with the requirements of §522.2 or §522.5(b) of this part. The Chair shall notify a tribe of its right to appeal under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§522.7 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chair under §522.2 of this part, the Chair shall approve the class III ordinance or resolution if:

(a) A tribe meets the submission requirements contained in §522.2 of this part;

(b) The ordinance or resolution meets the requirements contained in §522.5(b) (2), (3), (4), (5), (6), and (7) of this part; and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under §522.11 of this part.

§522.8 Disapproval of a class III ordinance.

(a) Notwithstanding compliance with the requirements of §522.7 of this part and no later than 90 days after a submission under §522.2 of this part, the Chair shall disapprove an ordinance or resolution and notify a tribe of its right of appeal under part 582 of this chapter if the Chair determines that:

(1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of the tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§522.9 Publication of class III ordinance and approval.

The Chair shall publish notice of approval of class III tribal gaming ordinances or resolutions in the Federal Register, along with the Chair's approval thereof.

§522.10 Approval by operation of law.

If the Chair fails to approve or disapprove an ordinance or resolution or amendment thereto submitted under §522.2 or §522.3 of this part within 90 days after the date of submission to the Chair, a tribal ordinance or resolution or amendment thereto shall be considered to have been approved by the Chair but only to the extent that such ordinance or resolution or amendment thereto is consistent with the provisions of the Act and this chapter.

§522.11 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under §522.12 of this part), a tribal ordinance shall require:

(a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chair;

(b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in §522.4(b)(2) of this part;

(c) That not less than 60 percent of the net revenues be income to the tribe;

(d) That the owner pay an assessment to the Commission under §514.1 of this chapter;

(e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and

(f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits, and hours of operation.

§522.12 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under §502.3(e) of this chapter, a tribal ordinance shall contain the same requirements as those in §522.11(a)-(d) of this part.

§522.13 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chair, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chair one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the FEDERAL REGISTER and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the FEDERAL REGISTER under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect:

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

Dated: November 18, 2021.

E. Sequoyah Simermeyer,
Chairman.

[FR Doc. 2021-25843 Filed: 12/8/2021 8:45 am; Publication Date: 12/9/2021]